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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

WILMA PUNCH et al., Plaintiffs and Respondents, v. CITY OF COMPTON, Defendant and Appellant.	B145829 (Los Angeles County Super. Ct. No. TC011082)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael B. Rutberg, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Legrand H. Clegg II, City Attorney, Wilmont A. Odom, Chief Deputy City Attorney, for Defendant and Appellant.

Law Offices of Wayne M. Abb and Wayne M. Abb for Plaintiffs and Respondents.

Defendant City of Compton (City) appeals from the judgment entered in favor of plaintiffs Wilma Punch and Los Angeles Homeowners Aid, Inc. (LAHAI), following a bench trial in which the court found that City had failed to give proper notice of its intention to demolish plaintiffs' building. We reject City's contention that the judgment was unsupported. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In March 1998, plaintiffs filed a complaint against City seeking damages for inverse condemnation and negligence with respect to a six-unit residential property. The evidence at trial established that, in 1995, the property was purchased by Terri Carter. City, which received several complaints regarding the property, caused a title search to be conducted in June 1996. The title report listed Carter as trustor and LAHAI as beneficiary.

City thereafter mailed notices to Carter at an address in Las Vegas, Nevada, that the property was a public nuisance based on violation of various code provisions. Specifically, among other things, the building had been abandoned, there were broken windows and accumulated rubbish, and the building had sustained fire damage. City boarded up the property and requested payment from Carter for abating the nuisance. Notices of the City's actions, all of which were sent by regular mail, indicate that "cc's" were mailed to LAHAI. City also recorded notices of lien claims with the County Recorder of Los Angeles County for work performed on the property.

On March 20, 1997, LAHAI purchased the property at a trustee's foreclosure sale. On March 25, 1997, City recorded a "Certification of the Existence of a Substandard Property." The certification stated that the substandard condition of the property had not been abated within the requisite period of time and that a lien would be filed for costs of

abatement work.[1] On March 28, LAHAI's deed to the property was recorded with the county recorder. On April 16, 1997, LAHAI sold the property to Punch.

On April 17, 1997, City secured a new title report on the property as part of policy of updating information on properties that had been declared nuisances. The report noted that Carter had "lost [the] property" in a sale to LAHAI on March 28, 1997.

On May 8, 1997, the property was again damaged by fire. On May 9, City determined that the damage was so great that the building was a hazard and needed to be demolished an on emergency basis. However, the building was not demolished until June 27, 1997. The delay was caused by requirements relating to inspection and removal of asbestos and the need for city council authorization of funds for the demolition work.

Meanwhile, on May 22, 1997, Punch's deed to the property (on which LAHAI held a security interest) was recorded. On June 5, 1997, City mailed a "final notice" to abate a public nuisance. In spite of the April 17, 1997 title report indicating that Carter was no longer the owner, the notice was mailed to Carter. On June 11, another notice was mailed to Carter, stating that City planned to demolish the fire-damaged structure. On June 25, notice was mailed to Carter of the cost of nuisance abatement. All three notices were sent by regular mail and show "cc's" to LAHAI.

LAHAI's assistant vice-president, Carl Vandenberg, testified that he had not seen any notices from City regarding the property and did not know of the demolition until after it had occurred. Although Vandenberg does not personally receive mail that is delivered to LAHAI, the person who does, Mr. Hoffman, would turn over to Vandenberg anything that "has to do with substandard or anything to do with the city . . . ." Punch also presented evidence that she had no advance warning of the demolition. Finally,

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[1] The certification and earlier liens recorded by City set forth the correct street address of the property. However, they incorrectly identify the owner of record as Ramon and Guillermina Gomez and contain an erroneous legal description of the property.

evidence was presented that Punch had planned to renovate the property and that the value of the property had decreased substantially as a result of the demolition.

During closing argument, the court noted that plaintiffs never produced Hoffman as a witness. Plaintiffs responded that Hoffman was not available and that an adequate case had been made without Hoffman's testimony to rebut the presumption of Evidence Code section 641 that LAHAI had received the notices "cc'd" to it.[2] Plaintiffs also asked that the "cc" notations be viewed with suspicion because they were written in a different typeface than the accompanying notices. Plaintiffs further argued that, regardless of the Evidence Code presumption, City had violated its own municipal code, which requires such notices to be sent by certified or registered mail. Also, the municipal code provision authorizing demolition on an emergency basis requires notice to the owner if permitted by the circumstances. Here, although City intended to proceed with demolition on an immediate, emergency basis, the demolition did not occur until several weeks after it was ordered, thereby requiring that notice be given.

City argued to the trial court, among other things, that evidence of the "cc's" on the notices established that plaintiffs had actual or constructive notice of the planned demolition. It further argued that the March 25, 1997 recordation of the certification of substandard property put plaintiffs on constructive notice of the condition of the property and that the incorrect legal description was of no consequence because the documents recorded by City contained the correct tax parcel number.

The court found in favor of plaintiffs, awarding damages of $85,000 to LAHAI and $53,000 to Punch. A statement of decision and judgment were filed on October 20, 1999.

The statement of decision provides in part that City "failed to comply with the procedures set forth in Compton Municipal Code sections 14-3.10, 14-3.12, and 14-3.21

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[2] Evidence Code section 641 provides that "[a] letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail."

for notice to owners and holders of trust deeds on the property prior to abatement of a public nuisance by demolition before demolishing the six unit apartment building on the property."[3] Failure to give notice to LAHAI "was not excused by an emergency requiring immediate action, or by any other excuse or justification, where testimony established that notices were sent to Terri Carter, who no longer held an interest in the property, for nearly a year before the City of Compton demolished the six unit apartment building." Failure to give notice to Punch "was not excused by an emergency requiring immediate action, where testimony established that approximately five weeks elapsed from the time the City of Compton resolved to demolish the apartment building to the time demolition was begun, and that the City of Compton could receive an updated title report within two days of ordering it from their title company." Plaintiffs "did not have constructive or inquiry notice of the City of Compton's intent to demolish the six unit apartment building on the property because the Notices of Lien and Notice of Substandard Property which the City of Compton recorded and on which they relied did not set forth the correct legal description for the property." The statement of decision further provided that City was liable for damages arising out of the destruction of plaintiffs' property without due process of law and for negligent failure to comply with its municipal code.

City did not object to the statement of decision. It filed a timely notice of appeal.

DISCUSSION

"'[T]he power of the appellate court begins and ends with a determination as to whether there is any substantial evidence [on the record as a whole], contradicted or uncontradicted,' to support the trial court's findings. . . . 'We must therefore view the

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[3] Compton Municipal Code section 14-3.10 requires notice of a hearing on abatement of a public nuisance, section 14-3.12 requires that the notice be served in person or by certified or registered mail with an affidavit of service filed with the building department, and section 14-3.21 requires that a copy of an order to demolish be posted in a conspicuous place.

evidence in the light most favorable to the prevailing part[ies], giving [them] the benefit of every reasonable inference and resolving all conflicts in [their] favor . . . .'" (*Estate of Leslie* (1984) 37 Cal.3d 186, 201, citations omitted; accord, *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 51.) "All issues of credibility are likewise within the province of the trier of fact. [Citation.]" (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925.)

City contends that the trial court erred in finding that, because the liens and certification of substandard property recorded by City did not set forth the correct legal description of the property, plaintiffs did not have notice of City's intent to demolish. City bases its contention on the assertion that "[i]n Los Angeles County, property is indexed according to the assessor's parcel number."[4] But regardless of how property is indexed in Los Angeles County (a subject on which no evidence was presented), City does not cite any portion of the record that contains evidence to demonstrate that a document recorded with an incorrect book, page, and tract number (that just happens to coincide with the assessor's parcel number) would necessarily be uncovered in a title search. Accordingly, we conclude that the trial court did not err in finding that the recorded documents did not provide constructive notice to plaintiffs.[5]

We also reject City's contention that it properly demolished the property without notice based on the emergency procedure of its municipal code. Compton Municipal Code section 14-3.12 requires that notices with respect to abatement of public nuisances be served either personally or by registered mail. Section 14-1.33, which permits a

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[4] The documents recorded by City set forth the legal description, in part, as "Book 6157 Page 017 Parcel 023." In fact, the description of the property appears in recorder's office book 66, page 56 of maps. City's incorrect legal description was apparently derived from the assessor's parcel number, which is 6157 017 023.

[5] Given this conclusion, we need not discuss plaintiffs' contention that notice of these documents is largely irrelevant because they did not state that City planned to demolish the subject property.

hazardous building to be demolished, provides that "[n]otice shall be given to the record owner . . . *as the circumstances will permit* or without any notice whatever, when in the opinion of the Building Official immediate action is necessary in order to protect the general welfare and safety of the public." (Italics added.)

City asserts, without citation of authority, that the trial court could not "arbitrarily conclude, as it did in its statement of decision, that, because the demolition was delayed, Compton had time to obtain another title report and provide notice of the demolition to plaintiffs." We do not find anything arbitrary about the trial court's conclusion, nor do we find any basis in the record or in law that would support City's position. Accordingly, it is rejected.

Finally, we reject City's contention that insufficient evidence was presented to rebut the presumption of Evidence Code section 641. At trial, plaintiffs presented evidence that LAHAI Assistant Vice-president Vandenberg did not get the notices, which Hoffman would have given to him, and additionally argued that the "cc" notations were questionable because they were written in a different typeface than the notices themselves. Although not specifically mentioned in the statement of decision, such evidence was sufficient to support the trial court's implied finding that the presumption had been rebutted. (See *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1132–1133.) In addition, City did not attempt to refute plaintiffs' argument that it had violated its own code requirements by sending the notices by regular mail, rather than certified or registered. Accordingly, City's contention that plaintiffs were informed of its intent to demolish the property based on the notices it had placed in the mail must be rejected.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

ORTEGA, Acting P. J.

VOGEL (MIRIAM A.), J.